



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



Mr. C. William Johnson
3 Little Rob Road
Atkinson, NH 03811

NOTICE OF PROPOSED
ADMINISTRATIVE FINE
NO. AF 02-013

March 19, 2002

Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division ("the Division") to C. William Johnson, pursuant to RSA 482-A and Env-C 614. The Division is proposing that fines totaling \$5,500 be imposed against you for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. C. William Johnson is an individual having a mailing address of 3 Little Rob Road, Atkinson, NH 03811.

III. Summary of Facts and Law Supporting Claim(s)

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.
3. C. William Johnson ("Mr. Johnson") is the owner of property located at 3 Little Rob Road in Atkinson, NH, identified as Lot 67, Map 9 of the Town of Atkinson Tax records ("the Property")
4. On December 11, 2000, Division personnel inspected the Property. The inspection revealed the following:
 - a) that Mr. Johnson had been working in a jurisdictional area to remove and replace a dam and had dredged and filled approximately 5,000 square feet of jurisdictional area;
 - b) that Mr. Johnson had dredged a 150' x 100' pond without a permit from DES;

- c) that Mr. Johnson had dredged and filled approximately 400 linear feet of a perennial stream without a permit from DES;
 - d) that Mr. Johnson had dredged approximately 300 square feet of jurisdictional area surrounding an old dam on the Property without a permit from DES; and
 - e) that Mr. Johnson had dredged and filled approximately 200 square feet of jurisdictional area surrounding a culvert on the Property without a permit from DES.
4. Following the December 11, 2000 inspection, Division personnel sent Mr. Johnson a letter informing him that further work in the jurisdictional area required a wetlands permit from DES
5. On May 29, 2001, the Division sent a follow-up letter to Mr. Johnson. The letter reminded him that further work required a permit from DES, and that DES had not received a permit application from him. The letter stated that further work in jurisdictional areas without a permit would result in the Division taking enforcement action against him.
6. On September 11, 2001, Division personnel again inspected the Property. This second inspection revealed additional dredging and fill placed in jurisdictional areas and fill and disturbance on the banks of a perennial stream in excess of the original work discovered on the Property during the first inspection.
7. During the inspection, Division personnel again requested that Mr. Johnson cease work in jurisdictional areas and apply for DES permits for the work.

IV. Violations Alleged and Proposed Administrative Fines

1. C. William Johnson has violated RSA 482-A:3, I and RSA 482-A:14, III by dredging and filling approximately 5,000 square feet of jurisdictional area without a permit from DES. For this violation, Env-C 614.03(a)(1) specifies a fine of \$1,000.
2. C. William Johnson has violated RSA 482-A:3, I and RSA 482-A:14, III by dredging a 150' x 100' pond without a permit from DES. For this violation, Env-C 614.04(a)(1) specifies a fine of \$1,500.
3. C. William Johnson has violated RSA 482-A:3, I and RSA 482-A:14, III by dredging and filling approximately 400 linear feet of a perennial stream without a permit from DES. For this violation, Env-C 614.05(c)(2) specifies a fine of \$2,000.
4. C. William Johnson has violated RSA 482-A:3, I and RSA 482-A:14, III by dredging approximately 300 square feet of jurisdictional area surrounding an old dam on the Property without a permit from DES. For this violation, Env-C 614.02(a)(2) specifies a fine of \$500.
5. C. William Johnson has violated RSA 482-A:3, I and RSA 482-A:14, III by dredging and filling approximately 200 square feet of jurisdictional area surrounding a culvert on the Property without a permit from DES. For this violation, Env-C 614.02(a)(2) specifies a fine of \$500.

The total fine being sought is \$5,500

V. Required Response, Opportunity for Hearing

Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than April 12, 2002 using the enclosed colored form.

1. If Mr. Johnson would like to have a hearing, please sign the appearance section of the colored form and return it to James Ballentine, DES Enforcement Paralegal, as noted on the form. A Notice of Scheduled Hearing will be issued.
2. If Mr. Johnson chooses to waive the hearing and pay the proposed fine, please have the authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.
3. If Mr. Johnson wishes to discuss the possibility of settling the case, please have the authorized representative sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate Mr. Johnson's interest in settling.

Mr. Johnson is not required to be represented by an attorney. If Mr. Johnson chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

VI. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Mr. Johnson committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Mr. Johnson committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that Mr. Johnson proves, by a preponderance of the evidence**, applies in this case:

- The violation was a one-time or non-continuing violation, **and** Mr. Johnson did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Mr. Johnson did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, Mr. Johnson was making a good faith effort to comply with the requirement that was violated.


- 3 Mr. Johnson has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to Mr. Johnson's case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that Mr. Johnson committed the violation(s) alleged above and that the fine(s) should be imposed. The hearing is Mr. Johnson's opportunity to present testimony and evidence that Mr. Johnson did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced. If Mr. Johnson has any evidence, such as photographs, business records or other documents, that Mr. Johnson believes show that Mr. Johnson did not commit the violation(s) or that otherwise support Mr. Johnson's position, Mr. Johnson should bring the evidence to the hearing. Mr. Johnson may also bring witnesses (other people) to the hearing to testify on Mr. Johnson's behalf.

If Mr. Johnson wishes to have an informal meeting to discuss the issues, Mr. Johnson must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If Mr. Johnson has any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.


COPY
Harry T. Stewart, P.E., Director
Water Division

Enclosure (NHDES Fact Sheet #CO-2001)

cc: Gretchen Rule, Administrator, DES Legal Unit
Mark Harbaugh, Enforcement Attorney
Marjory Swope, NHACC
Jennifer Patterson, Sr. Asst. Attorney General, EPB, N.H. Dept of Justice

Susan Alexant, DES Rules & Hearings Attorney
Atkinson Conservation Commission
Atkinson Board of Selectmen